



Advisory Opinion 09-011

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2008). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On April 24, 2009, the Information Policy Analysis Division (IPAD) received an email from Janet Shefchik, the data practices compliance official for the Dakota County Community Development Agency (CDA). In her email, Ms. Shefchik asked the Commissioner to issue an advisory opinion regarding the CDA's obligation to respond to a request for data. IPAD asked for additional information, which Ms. Shefchik provided on April 30, 2009.

A summary of the facts as Ms. Shefchik provided them follows. A person asked the CDA for certain bi-weekly certified payroll information. Ms. Shefchik wrote:

This request relates to a Senior Building that is under construction for the CDA. Superior Plumbing & Heating is a subcontractor on the project. The CDA has voluntarily set its required pay rates for its senior building projects equal to area prevailing wage rates. The CDA's Sr. Buildings, however, are funded by the CDA (not state or federal funds) and are NOT subject to prevailing wage payment and reporting requirements. This means that we are not required to collect payroll data from the contractors on their employees. In fact, neither our policies nor contracts require us to collect this data. Our practice has been that when there are specific allegations of underpayment by a worker on a Sr. Building project, CDA staff will investigate. As there have been no allegations, we do not have the certified payroll data that is being requested, nor do we intend to request it on a bi-weekly basis as stated in the request. In summary, it is our understanding that if the data does not exist and we are not required to collect or maintain it as public data; then we are not required to produce it.

Issue:

Based on Ms. Shefchik's opinion request, the Commissioner agreed to address the following issue:

Pursuant to Minnesota Statutes, Chapter 13, must the Dakota County Community Development Agency (CDA), in response to a request, produce data that it does not maintain and is not required to collect?

Discussion:

Pursuant to Minnesota Statutes, Chapter 13, government data are public unless otherwise classified. (Minnesota Statutes, section 13.03, subdivision 1.) Upon request, government entities must provide access to public government data.

Government data are defined at section 13.02, subdivision 7, as all data collected created, received, maintained, or disseminated by a government entity regardless of physical form, storage media, or conditions of use.

As the Commissioner has stated in previous advisory opinions, Chapter 13 does not require government entities to create data, but rather to provide access to existing data. In some circumstances, a government entity might be required to obtain data it does not otherwise maintain, if it is required to maintain those data to comply with Minnesota Statutes, section 15.17, commonly known as the Official Records Act. (See, for example, Advisory Opinions 08-011 and 08-024.)

According to Ms. Shefchik, the CDA is not required to collect or maintain the requested data. Therefore, the CDA is not required to produce the payroll data in response to a request.

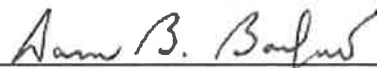
(The Commissioner notes that if CDA did maintain the requested data, it would need to determine how the data are classified; some of the data may not be public.)

Opinion:

Based on the facts and information provided, my opinion on the issue that Ms. Shefchik raised is as follows:

Pursuant to Minnesota Statutes, Chapter 13, the Dakota County Community and is not required to collect.

Signed:



Dana B. Badgerow
Commissioner

Dated:

May 6, 2009